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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 700

[Docket No. 0912311453-0016-01]

[RIN 0694-AE81]

Revisions to Defense Priorities and Allocations System Regulations

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule would clarify existing standards and procedures by which the Bureau of Industry and Security (BIS) may require that certain contracts or orders that promote the national defense be given priority over other contracts or orders. It also proposes new standards and procedures for such prioritization with respect to contracts or orders for emergency preparedness activities. Finally, this rule proposes new standards and procedures by which BIS may allocate materials, services and facilities to promote the national defense. This rule implements provisions in the Defense Production Act Reauthorization of 2009 (123 Stat. 2006) (111 P.L. 67) (September 30, 2009) regarding publication of regulations providing standards and

procedures for prioritization of contracts and orders and for allocation of materials, services, and facilities to promote the national defense under emergency and non-emergency conditions.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov> The ID number for this rulemaking is BIS-2010-0021.
- By e-mail directly to publiccomments@bis.doc.gov. Include RIN 0694-AE81 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. Refer to RIN 0694-AE81.

FOR FURTHER INFORMATION CONTACT: Liam McMenanim at (202) 482-2233, liam.mcmenamin@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

EXECUTIVE SUMMARY

Purpose of the Regulatory Action

This proposed rule would update the priorities and allocations provisions set forth in the Defense Priorities and Allocations System regulations (15 CFR part 700) (DPAS) and implemented by

the Bureau of Industry and Security (BIS) consistent with its authorities under Title I of the Defense Production Act of 1950 (as amended) (DPA). This rule also would establish certain new administrative procedures through which BIS will implement the allocations provisions of the DPA. In addition, this proposed rule would revise definitions found in § 700.8 of the DPAS regulations.

This rule implements the provisions in the Defense Production Act Reauthorization of 2009 (Pub. L. 111–67, 123 Stat. 2006, September 30, 2009) (Reauthorization Act), which require agencies with priorities and allocations authorities to issue rules establishing standards and procedures by which those authorities shall be used to promote the national defense, under both emergency and non-emergency conditions. This rule is part of a multi-agency effort that forms the Federal priorities and allocations system.

Background

The Reauthorization Act requires each Federal agency delegated priorities and allocations authority consistent with section 101 of the DPA to issue final rules establishing standards and procedures by which that authority is used to promote the national defense, during both emergency and non-emergency conditions. In the Reauthorization Act, Congress further directed that, to the extent practicable, the Federal agencies with priorities and allocations authority should work together to develop a consistent and unified Federal priorities and allocations system.

In order to meet this mandate, BIS worked in conjunction with the Departments of Agriculture (USDA), Defense (DoD), Energy (DOE), Health and Human Services (HHS), Homeland Security (DHS), and Transportation (DOT) to develop common provisions based on the DPAS

that can be used by each Department in its own regulation. The six regulations to be promulgated, one by each Department with delegated DPA Title I authority, comprise the Federal priorities and allocations system.

This proposed rule would update and expand the DPAS. BIS relies upon and uses the DPAS to implement priority and allocation actions involving industrial resources. BIS administers the DPAS pursuant to authority under Title I of the DPA (50 U.S.C. app. 2071, *et seq.*) as delegated by Executive Order 13603, March 16, 2012 (77 FR 16651, 3 CFR, 2012 Comp., p. 225). The DPAS has two principal components—priorities and allocations. Under the priorities component, certain contracts between the government and private parties or between private parties for the production or delivery of industrial resources are required to be given priority over other contracts to facilitate expedited delivery in promotion of the U.S. national defense. Under the allocations component, materials, services, and facilities may be allocated to promote the national defense. For both components, the term “national defense” means programs for military and energy production or construction, homeland security, stockpiling, space, emergency preparedness, and critical infrastructure protection and restoration. The term also includes foreign military and critical infrastructure assistance.

The Reauthorization Act required that within 270 days of its enactment, all agencies to which the President has delegated priorities and allocations authority under Title I of the DPA must publish final rules establishing standards and procedures by which that authority will be used to promote the national defense in both emergency and non-emergency situations. The act also required all

such agencies to consult “as appropriate and to the extent practicable to develop a consistent and unified Federal priorities and allocations system.” (123 Stat. 2006, at 2009). This rule is one of several rules that have been or will be published to implement the provisions of the Reauthorization Act. The final rules of the agencies with Reauthorization Act authorities, which are the USDA, DOE, HHS, DOT, DoD, and DOC, will comprise the Federal priorities and allocations system.

June 2010 proposed rule, comment and response.

Proposed rule and comment.

On June 7, 2010, BIS published a proposed rule to update and expand 15 CFR part 700 (75 FR 32122, June 7, 2010). BIS received one comment on that proposed rule. The commenter noted that Section 700.11 of the proposed rule discussed prioritization directives and referred to Section 700.12. The commenter noted that Section 700.12 stated that prioritization directives take precedence over all DX rated orders, DO rated orders, and unrated orders but that allocation orders take precedence over all. The commenter also noted the inference that prioritization directives may be different from DX rated orders. The commenter stated that he could find no provision that told how to mark an order as a prioritization directive so that the contractor could clearly tell that it was dealing with a prioritization directive.

Response

The June 7, 2010, proposed rule, the existing DPAS, and this proposed rule contemplate that directives will be issued by BIS to specific persons. BIS will provide the directive to the person to whom it applies. To the extent that directives modify or conflict with a DO or DX rated order

or unrated order, the directive takes precedence. As will be further discussed below, this proposed rule does not draw a distinction between prioritization directives and allocation directives.

Due to the limited response to the June 2010 proposed rule and because BIS has reassessed some aspects of the June 2010 proposed rule, BIS has made several amendments and issued this second proposed rule for public consideration.

Summary of principal differences between this proposed rule and the June 2010 proposed rule.

Retention of existing DPAS format.

The June 2010 proposed rule would have substantially reorganized the format of the DPAS. This proposed rule would largely retain the existing format. Upon reconsideration, BIS has concluded that the benefits of the revised format did not outweigh its drawbacks. Companies and government agencies that use the current DPAS are familiar with the current regulatory structure. They would have to incur the cost of learning any new structure that might be imposed. For example, the Department of Defense uses DPAS authority delegated to it by the Department of Commerce to place ratings on approximately 300,000 contracts annually. The Departments of Commerce and Defense estimate that, in addition, approximately 400,000 rated contracts are placed annually to satisfy national defense requirements. Parties who receive these rated contracts have not expressed to BIS any desire to reformat the regulations.

In addition to familiarity by current users, retaining the existing DPAS format simplifies identifying the substantive and procedural changes that this proposed rule would make and distinguishing those changes from the editorial changes that this proposed rule would also make.

Complementary roles of priorities and allocations and single set of deadlines.

Although the June 2010 proposed rule did not explicitly state that priority authority and allocations authority were mutually exclusive, it strongly implied that such was the case. For example, § 700.62 in the June 2010 proposed rule indicated that allocation orders would take precedent over priority ratings. BIS does not intend to issue conflicting orders or ratings.

Currently, BIS issues only priority ratings. However, BIS can envision situations in which some combination of priorities and allocations would be needed. Accordingly, this proposed rule would not assign precedence between priorities and allocations by regulation. Instead, it would opt for flexibility when dealing with the situations that call for allocation orders. A description of the relationship between allocation orders and previously or subsequently received rated orders and unrated orders would be included in any allocation orders issued.

In connection with BIS' judgment that priorities authority and allocations authority might be used in a complementary manner, BIS has now concluded that shorter time limits than what the June 2010 proposed rule would have imposed with respect to filing requests for exception or adjustment of allocation orders, appeals of decisions denying those requests and BIS responses to those filings are not necessary. Therefore this proposed rule would apply, to both priorities and allocations, the time limits that the current DPAS applies to filing requests for exception or adjustment of priority rated orders, appeals of decisions denying those requests, and BIS

responses to those filings. Although allocations would be used only in the circumstances described in the paragraph immediately below, BIS does not believe that such circumstances would necessarily require shorter time limits for the above-noted actions.

BIS does not intend or expect that allocations will be issued routinely or frequently. Under this proposed rule, allocations may be used to control the distribution of a material in the civilian market only upon approval by the President of a finding by the Secretary of Commerce or his or her designee that such material is a scarce and critical material essential to the national defense, and that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship. The June 2010 rule proposed that such findings be made by the Secretary of Commerce. This proposed rule adds language that would allow the Secretary or a designee of the Secretary to make such findings. This change recognizes that a Department Organization Order of the Department of Commerce delegates to the Under Secretary for Industry and Security those DPA authorities that have been delegated to the Secretary of Commerce. Even a narrower use of allocations authority under this proposed rule would also be subject to the policy set forth in § 700.30 which provides that allocations will be used only when there is insufficient supply of a material, service, or facility to satisfy national defense requirements through use of priorities authority or when the use of priorities authority would cause a severe and prolonged disruption in the supply of materials, services or facilities available to support normal U.S. economic activity. Given these requirements and its past practice, BIS anticipates that use of allocations will be a rare event.

Reduced time for written follow-up of verbal notice that a party is unable to comply with an order.

Under the current DPAS, a party who gives verbal notice that performance of a priority rated order will be delayed must provide a written confirmation within five working days. The June 2010 proposed rule would have retained this provision and would have imposed the same time limit for written confirmation that a party is unable to comply with an allocation order. Upon further consideration, BIS has concluded that such written confirmation should be transmitted within one working day of the verbal notice. A party making such a notice would know at the time of the verbal notice the reasons that it cannot meet the specified delivery date or comply with the order. Rated orders are issued to satisfy requirements related to military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, emergency preparedness, and critical infrastructure protection and restoration. Reducing the reason to writing should not take longer than one working day and the nature of these orders justifies requiring expeditious communication.

Issuance of allocations orders by an authorized employee or official other than the Secretary.

The June 2010 proposed rule stated that allocations orders would be signed by or include the name of the Secretary of Commerce and be addressed to the person to whom the order applies. This proposed rule would provide that an authorized official or employee sign allocations orders, consistent with existing practices. Both the June 2010 proposed rule and this proposed rule would require the President's approval of the finding before allocations could be used to control the general distribution of a material in the civilian market. BIS believes that, given this

requirement, a requirement that the Secretary sign every order that may be issued to implement an allocation decision would serve no purpose.

Constructive notice of allocations orders through Federal Register publication.

The June 2010 proposed rule would have required that allocations orders (and modifications or cancellations of such orders) be issued directly to affected persons. This proposed rule would permit such orders to be issued directly to affected persons or by constructive notice through publication in the *Federal Register*. The *Federal Register* notice might apply to a specified class of persons rather than naming all affected persons. For example, an allocation order published in the *Federal Register* might apply to all manufacturers of a specified product but not name every manufacturer of that product in the order. BIS believes that situations might arise in which allocations are justified and that, although BIS would be able to identify the material to be allocated, it would not be able to identify all of the suppliers of that material. In such situations, constructive notice to the affected class of persons by publication in the *Federal Register* would be consistent with the procedure that the government uses generally when notice must be given to large numbers of persons or to persons not all of whom can be individually identified.

Use of rated orders for emergency preparedness activities.

This proposed rule would authorize use of rated orders for emergency preparedness activities and would authorize such orders to require acceptance or rejection within a shorter time than the 10 or 15 working days required for acceptance or rejection of other DX and DO rated orders.

Emergency preparedness rated orders may require acceptance or rejection in as little as six hours after receipt of the order if the order is in response to a hazard that has occurred or 12 hours if the order is to prepare for an imminent hazard. This proposed rule would also require use of rated orders to obtain items needed to fill an emergency preparedness rated order and would require use of the reduced times for acceptance or rejection noted above. The June 2010 proposed rule did not provide the option of imposing a shorter timeframe for acceptance or rejection of rated orders for emergency preparedness activities issued by the Department of Commerce, although it did note that rated orders issued by other agencies that are delegated authority by the Department of Commerce might have shorter timeframes for acceptance or rejection. This proposed rule provides for the option of shorter timeframes for all orders issued for emergency preparedness activities.

Removal of limits on use of DO rated orders for the metalworking machine industry.

As discussed more fully in the description of the proposed changes to § 700.31 below, this proposed rule would remove completely the special treatment of the metalworking machine industry currently found in § 700.31. That section limits the amount of DO rated orders that metal working machine producers are required to accept. In recent years, there have been so few DO rated orders for metalworking machines that the maximum set by § 700.31 has never been met. Therefore, BIS believes that the maximum limitation is not needed. The June 2010 proposed rule made no changes to these limits.

Removal of mandatory criteria for evaluating whether certain materials, equipment, and services used to maximize energy supplies are “scarce.”

As discussed more fully in the description of the proposed changes to § 700.21 below, this proposed rule would clarify that the criteria listed for determining whether certain materials, equipment, and services related to energy production are “scarce” and whether priorities authority is needed are illustrative lists of criteria that the Department of Commerce may use. The June 2010 proposed rule would have retained the language currently in § 700.21.

Procedure for requesting assistance in obtaining rated items or priority rating authority for homeland security, emergency preparedness, and critical infrastructure protection and restoration assistance programs within the United States.

As discussed more fully in the description of proposed § 700.55 below, this proposed rule would provide a procedure for requesting assistance in obtaining rated items or priority rating authority for homeland security, emergency preparedness, and critical infrastructure protection and restoration assistance programs within the United States.

Revision to Schedule I.

This proposed rule would revise Schedule I to part 700 to provide a program symbol for programs intended to provide critical infrastructure assistance to foreign nations. Additionally, this proposed rule would make format changes and a clarification, both of which are more fully described below.

Section-by-section analysis of the changes that this proposed rule would make to the existing DPAS.

The following discussion explains the changes that this proposed rule would make to the existing DPAS.

Revisions to Subpart A – Purpose.

Proposed § 700.1 – Purpose of this part. The header of this section would be changed from “Purpose” to “Purpose of this part” to be more specific. This section would state the purpose of the DPAS in general terms and would largely restate information that appears at 15 CFR § 700.1 in the existing regulations. However, extensive language about the source of BIS’ legal authority would not be incorporated into the proposed § 700.1 on the grounds that such language is not regulatory in nature. BIS believes that the language regarding the DPAS’s purpose would be clearer if it is not submerged in extensive discussions of legal authority.

Revisions to Subpart B – Overview.

Section 700.2 – Introduction. This rule would add references to homeland security and critical infrastructure protection and restoration activities to paragraph (a) to conform to the current definition of national defense in the DPA. Paragraph (b) would explicitly state that the Department of Commerce may exercise priorities and allocations authority. Paragraph (c) would state that recipients of rated orders have authority to place ratings on contracts with contractors, subcontractors, or suppliers. BIS is proposing to make these changes so that the introductory paragraph will give a more complete description of the DPAS and will reflect changes brought about by the 2009 amendments to the DPA under the Reauthorization Act. BIS believes that these changes would make this introduction more descriptive and useful.

Section 700.3 – Priority ratings and rated orders. This section would be shortened to remove material that is covered elsewhere in 15 CFR part 700. References to “these regulations” would be changed to “this part” to make clear that the regulations referred to are 15 CFR part 700.

Sections 700.4, 700.5, 700.6 and 700.7 would be removed because the information that they contain is duplicated elsewhere the DPAS.

Revisions to Subpart C – Definitions.

Section 700.8 – Definitions. This rule would remove the reference to definitions in the DPA and Stafford Act. Definitions from those acts that also apply to the DPAS would be set forth separately in this section.

New definitions would be added for “allocation,” “allocation order” and “allotment.” These definitions relate to the expanded allocations provisions in Subpart F, which is needed to implement the amendments set forth in the Reauthorization Act.

A new definition for “working day” also would be added. This term currently is in the DPAS, but is not defined. The term would be defined as “any day that the recipient of an order is open for business.”

As newly defined, this term would apply to time limits for acceptance or rejection of rated orders (other than orders placed for emergency preparedness activities), written confirmation of verbal notice that delivery or performance of a rated order will be delayed, and written confirmation of verbal notice of inability to comply with an allocation order.

The definitions of “critical infrastructure,” “homeland security” and “national defense” that appear in the DPA would be added so that readers would not need to refer to the statute for the definitions.

The definition of “*Maintenance, repair and operating supplies (MRO)*” would be amended by replacing the term “*Maintenance, repair and operating supplies*” with the term “*Maintenance, repair and/or operating supplies*.” For years, BIS has interpreted the term MRO to apply to maintenance, to repair, to operating supplies, to any combination of two of the three, or to all three. BIS is proposing to revise the language because it believes that the proposed language more clearly expresses the meaning that BIS has applied for years. In other respects, the definition is unchanged.

The new definitions of “emergency preparedness” and “hazard” relate primarily to the issuance of rated orders for emergency preparedness requirements, a topic addressed in §§ 700.13 and 700.15 of this proposed rule. The definitions of “emergency preparedness” and “hazard” are taken from the Stafford Act.

The definition of “official action” would be changed to cover actions related to allocations as well as priorities. This change is needed to address the expanded material regarding allocations in §§ 700.30 through 700.34 and references to allocations in other sections of this proposed rule.

New definitions would be added for the terms “priority rating” and “program identification symbols.” These definitions are not substantively different than the descriptions of priority ratings and program identification symbols that currently appear in § 700.11 of the DPAS. BIS believes that priority ratings and program identification symbols are sufficiently central to the concept of priorities under the DPAS to warrant inclusion in the definitions section.

The definition of “person” would be expanded to include international organizations to conform to proposed new §§ 700.57 and 700.58, which address military and critical infrastructure assistance to international organizations as well as to foreign governments.

The definition of “set-aside” would be revised to match the text of the definition of this term in each agency’s regulations (noted above) that together will comprise the Federal priorities and allocations system.

This proposed rule would remove the text currently at the beginning of the first sentence in § 700.8, which reads “In addition to the definitions provided in Section 702 of the Defense Production Act (excepting the definition of “industrial resources” and Section 602(a) of the Stafford Act) . . .” because the relevant definitions from those Acts would be added to § 700.8 of the DPAS under this proposed rule. This change would spare readers of the DPAS from the need to consult those two statutes to understand the meaning of terms used in 15 CFR part 700.

Revisions to Subpart D – Industrial Priorities.

Section 700.10 – Authority. Paragraph (a) would be revised to replace the reference to Executive Order 12919 with a reference Executive Order 13603, which revoked and superseded Executive Order 12919. Paragraph (b) would be revised to remove a reference to an internal delegation by the Department of Commerce, because that reference is unnecessary. The description of the priorities and allocations authority conveyed by statute or executive order to other government agencies currently found in § 700.18(b)(1) would be moved to a new paragraph (c) of Section 700.10. The language describing the authority of the Department of Agriculture would be revised to conform to the language in Executive Order 13603. The information currently in § 700.18(b)(2) would be removed because it merely describes an internal government procedure. The text regarding communications services would be revised to cite Executive Order 13618 of July 6, 2012. That executive order revoked Executive Order 12472, which currently is cited in § 700.18(b)(2). BIS believes that placing all of the statements of agency authority in a single section would aid understanding of the Defense Priorities and Allocations System Regulations.

700.11 – Priority ratings. The phrase “to this part” would be added immediately following “Schedule I” in the second sentence of paragraph (b) to precisely identify the schedule. This is not a substantive change.

700.12 – Elements of a rated order. Revised paragraph (a) of this section would be headed “Elements required for all rated orders” and would incorporate all of the elements of current paragraphs (a), (b) and (c) of § 700.12. In addition, in paragraph (a), this proposed rule would revise the parenthetical listing of rated order symbol examples by replacing “DO-H1”, which is rarely used, with “DO-N1”, which is more commonly used and which indicates a Federal

emergency preparedness, mitigation, response and recovery action approved for DPAS support by the Department of Homeland Security.

Paragraph (b), headed “Additional element required for certain emergency preparedness rated orders,” would be added. This new paragraph would provide that if a rated order is placed for the purpose of emergency preparedness requirements, and if expedited action is necessary or appropriate to meet those requirements, the order must include a statement informing the recipient that the order is for the purpose of emergency preparedness and of the amount of time within which the recipient must accept or reject the order. The minimum amount of time that must be allowed for acceptance or rejection would be governed by proposed § 700.13(d)(2).

Section 700.13 – Acceptance and rejection of rated orders. In paragraph (c), introductory text, the word “Commerce” would be replaced with the phrase “the Department of Commerce.”

Paragraph (d) – Customer notification requirements. This paragraph would be changed in the following manner. Paragraph (d)(1) would continue to apply to most rated orders and would be substantively unchanged from existing paragraph (d)(1). The currently undefined term “working days” would be subject to the definition proposed in § 700.8 of this proposed rule. DO rated orders would have to be accepted or rejected within 15 working days after receipt, and DX rated orders would have to be accepted or rejected within 10 working days after receipt. Paragraph (d)(2) would be revised to address customer notification requirements for orders placed for emergency preparedness requirements where expedited action is necessary or appropriate to meet those requirements. Such orders would have to be accepted or rejected in the time frame noted in the order. That time frame could be as short as six hours if the order is issued by an authorized person in response to a hazard that has occurred, or 12 hours if the order is issued by

an authorized person in response to an imminent hazard. Existing paragraph (d)(2), which requires persons who have accepted rated orders to give notice if performance will be delayed, would become paragraph (d)(3). The time limit in which to provide written confirmation of a verbal notice would be changed from five working days to one working day. BIS believes that the nature of rated orders, supporting national defense requirements, justifies expeditious communications and that once a verbal notice of delayed performance has been given, putting that notice into writing should not take more than one working day.

Section 700.14 – Preferential scheduling. The proposed changes to this section are all non-substantive. To enhance clarity, an additional sentence emphasizing the priority of DX rated orders over DO rated orders would be added to the example at the end of paragraph (b).

Paragraph (c) which addresses conflicting rated orders would be amended by changing references to “§§ 700.50 through 700.54” to “Subpart H of this part” to more completely state the provisions that deal with resolution of conflicting rated orders.

Section 700.15 – Extension of priority ratings. This section requires persons who receive rated orders to use rated orders with suppliers to obtain items needed to fill a rated order. This proposed rule makes non-substantive changes to paragraphs (a) and (b). The term “this regulation” in paragraph (a) is replaced with “this part” to make clear that the regulation to which the sentence refers is 15 CFR part 700. The second sentence of paragraph (b) is revised to state expressly that the rating continues throughout the entire supply chain.

Paragraph (c) would be added. The new paragraph would require use of rated orders to obtain items needed to fill an emergency preparedness rated order. It would require persons who have received emergency preparedness rated orders that have shortened timeframes for acceptance or

rejection to impose shortened time frames for transmission of acceptance or rejection on rated orders placed with suppliers.

Section 700.16 – Changes or cancellations of priority ratings and rated orders.

A substantive change would be made to paragraph (d), which lists amendments to a rated order that do not constitute a new rated order. The phrase “prior to the start of production” would be added immediately following the phrase “a minor variation in size or design.” Once production of an item is commenced, changes in design that would be minor prior to production can become significant. Therefore, BIS believes that the rule should allow for only changes in size or design that are specified before production starts to be considered merely an amendment to an existing rated order rather than a new rated order.

Paragraph (e), which imposes a duty to cancel rated orders that have been placed with suppliers, or to cancel the ratings on those orders if the items so ordered are no longer needed to fill a rated order, would be modified. This rule would amend this paragraph to make it clear that the person who placed the rated orders with the suppliers (or that person’s successor in interest) has the duty to cancel them.

Paragraph (f), which imposes a duty to inform suppliers when a priority rating is placed on an order or when a priority rating is changed or cancelled, would be modified to make clear that the person who placed the rating on the order or who changed or cancelled the rating has the duty to inform the suppliers of the priority rating activity.

Section 700.17 – Use of rated orders. Currently § 700.17(f) provides that a person is not required to place a priority rating on an order for items with a value of less than \$50,000 or one

half the Federal Acquisition Regulation (FAR) Simplified Acquisition Threshold, whichever is larger, if delivery can be obtained in a timely fashion without the priority rating. This proposed rule would raise the threshold from the current value of \$50,000 to a new value of \$75,000 – which is one half the FAR Simplified Acquisition Threshold. None of the other changes to this section are substantive. Paragraph (d) describes combining rated and unrated orders. In paragraph (d)(1)(ii), which refers to the elements of a rated order as set forth in § 700.12, the word “four” would be removed because under this proposed rule, a rated order could have either four or five elements depending on whether or not the order is for certain emergency preparedness activities

Section 700.18 – Limitations on placing rated orders. This proposed rule would make several clarifying and stylistic changes to this section. Paragraph (a)(1) would be revised to apply only to rated orders that are made pursuant to 15 CFR part 700 because some rated orders may be issued pursuant to regulations of other agencies. A more explicit description of the authorizations to place rated orders would be added.

The sentence in paragraph (a)(1)(ii), which begins: “Separate rated orders . . .” would be moved to a separate paragraph (a)(3) and revised to read: “Separate rated orders may not be placed solely for obtaining minimum procurable quantities on each order if the minimum procurable quantity would be sufficient to cover more than one rated order.” BIS believes that this change improves syntax and more clearly expresses the intent behind the sentence.

Existing paragraph (b)(1) would be moved to a new paragraph (c) in section 700.10 as discussed above.

Existing paragraph (b)(2) would be eliminated entirely because it refers to internal government documents and does not provide any useful information to the public.

Existing paragraph (b)(3) would become paragraph (b). The first clause in this new paragraph (b) would be revised to state more clearly the policy regarding the items listed in paragraph (b), which are: copper raw materials, crushed stone, gravel, scrap, slag, central steam heat and waste paper. The new language would be: “Notwithstanding language authorizing or requiring the placement of rated orders found elsewhere in this part, no person may place a rated order to obtain the following items unless such order is authorized by an official action of the Department of Commerce.” BIS believes that the foregoing proposed language is clearer than the corresponding language currently in § 700.18(b)(3), which reads: “The following items under the jurisdiction of Commerce are currently excluded from the rating provisions of this regulation; however, these items are subject to Commerce Directives.” BIS does not regard this change as substantive.

Revisions to Subpart E—Industrial Priorities for Energy Programs.

Section 700.21 – Application for priority rating authority. This section sets forth the procedures to be used when applying for priority rating authority and provides information about the criteria considered by BIS in approving such applications. The proposed rule would make three changes. First, the rule would remove existing paragraph (b), which describes activities of the Department of Energy. BIS believes that this information is unnecessary.

Second, existing paragraph (c) would be the basis for new paragraph (b). The rule would rephrase proposed new paragraph (b) to emphasize that two Department of Commerce findings are needed to authorize priorities authority. Those findings are whether the items in question are

scarce, and whether there is a need to use the priorities authority. The rule would add language emphasizing that the list of factors that the Department of Commerce may use in making those two findings is illustrative. This proposed rule also would add language to paragraph (b) making clear that if scarcity is not found, the Department of Commerce will not consider whether priority authority is needed. Applications for priority rating authority to maximize domestic energy supplies are rare. BIS has not received one in more than a decade. BIS recognizes that it must make fact-based decisions on these applications in a consistent manner. However, the rarity of these applications makes devising a list of all of the factors that could be relevant to every application impossible. Therefore, BIS believes that the list of factors in the rule must be illustrative and that the actual relevant factors must be determined on a case-by-case basis.

The proposed rule also would remove existing paragraph (d), which provides that if the Department of Commerce does not find the items to be scarce, it will not analyze the need for priorities and allocations authorities because the concept would be addressed in paragraph (b).

Existing paragraph (e) would become paragraph (c) with minor changes to add clarity and precision. Existing paragraph (f) would become paragraph (d). The word “Commerce” would be replaced by “the Department of Commerce” throughout the section.

Revisions to Subpart F – National Emergency Preparedness and Critical Items. Subpart F would be retitled Allocation Actions.

Section 700.30 – Policy. This section would be rewritten. The current heading, “Priorities and allocations in a national emergency” would be revised to “Policy”.

The section would state that allocations authority would be used only when priority authority is unable to provide a sufficient supply of a material, service, or facility to meet the national defense, or when the use of priority authority would cause a severe and prolonged disruption in the supply of materials, services, or facilities available to support normal U.S. economic activities. This policy does not mean that priorities and allocations would, in all instances, be mutually exclusive. In some circumstances, the best course may be to use priority authority and allocations authority in a complementary manner. An example of such a situation is one in which national defense activities need less than the entire supply of a particular material, service or facility and priority authority could provide a sufficient supply to meet that need but only by causing a severe and prolonged disruption in the supply to support normal U.S. economic activities. If the national defense need were sufficiently critical, the best course overall might be to use priority authority to meet the national defense need and use allocation authority to distribute the remaining supply among other economic activities. Throughout this section, the definition of “national defense” in § 700.8 of this proposed rule would apply. Allocation authority would not be used to ration materials or services at the retail level.

Section 700.31 – General procedures. This section also would be rewritten. The heading would be changed from “Metalworking machines” to “General procedures.” The proposed procedures set out in this section and in proposed § 700.32 are intended to provide a reasonable assurance that allocations authority would be used only in situations where use of such authority is justified. Section 700.31 would set a list of the elements that must be in a plan that the Department of Commerce would be required to develop before using its allocations authority to address a supply problem in all instances, whether or not the allocation would control the general distribution of a material in the civilian market. The section would not preclude the Department

of Commerce from including additional elements in the plan; it would merely require that the following elements be included.

- A copy of the written determination made in accordance with section 202 of Executive Order 13603, that the program or programs that would be supported by the allocation action are necessary or appropriate to promote the national defense;
- A detailed description of the situation to include any unusual events or circumstances that have created the requirement for an allocation action;
- A statement of the specific objective(s) of the allocation action;
- A list of the materials, services, or facilities to be allocated;
- A list or description of the sources of the materials, services, or facilities that will be subject to the allocation action;
- A detailed description of the provisions that will be included in the allocation order, including the type(s) of allocation orders, the percentages or quantity of capacity or output to be allocated for each purpose, the relationship with previously or subsequently received priority rated and unrated contracts and orders, and the duration of the allocation action (e.g., anticipated start and end dates);
- An evaluation of the impact of the proposed allocation action on the civilian market; and
- Proposed actions, if any, to mitigate disruptions to civilian market operations.

The text of existing § 700.31 – “Metalworking machines” would be removed from the DPAS. Section 700.31 of the DPAS applies only when the metalworking machines that would be the subjects of a rated order have a list price in excess of \$2,500. Section 700.13 currently allows any metalworking machine producer to reject any DO rated order that calls for delivery in any one month of more than 60 percent of that month’s scheduled production of machines of the size called for in the order. Section 700.13 also currently allows any metalworking machine producer to reject any DO rated order that it receives less than three months prior to the beginning of the month for which delivery is requested.

BIS previously published a notice of inquiry seeking comments on the effects of eliminating this provision (73 FR 19666, April 17, 2006). BIS received no comments. Section 700.31, in effect, sets a limit on the amount of production capacity that a producer of metalworking machines could be required to set-aside in anticipation of rated orders. BIS has issued no directives or other official actions requiring such set-asides in many years. BIS believes that priority ratings affect an insignificant portion of the metalworking machine industry output. On that basis, BIS believes that a special provision that sets, by regulation, the maximum allocation that may be applied to this one industry, while allocations would be set for all other industries through fact-based, case-by-case basis determinations, is unwarranted.

Section 700.32 – Controlling the general distribution of a material in the civilian market. This section would be new. It would set forth the findings that the Secretary of Commerce (or the Secretary’s designee) must make and that the President must approve before the Department of Commerce may use allocations to control the distribution of a material in the civilian market. Those findings, which are required by § 101(b) of the DPA, are: such material is a scarce and critical material essential to the national defense, and the requirements of the national defense for

such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship. Section 201(e) of Executive Order 13603 directs each agency with delegated authority under section 101 of the DPA to make the finding required by section 101(b) and submit the finding for the President's approval through the Assistant to the President and National Security Advisor and the Assistant to the President for Homeland Security and Counterterrorism.

Section 700.33 – Types of allocation orders. This new section proposes to describe the three types of allocations orders the Department of Commerce might issue: a set-aside; a directive; or an allotment. A *set-aside* is an official action that would require a person to reserve a resource capacity in anticipation of receipt of rated orders. A *directive* is an official action that would require a person to take or refrain from taking certain actions in accordance with its provisions. For example, a directive could require a person to stop or reduce production of an item or service; prohibit the use of selected materials, services or facilities; divert supply of one type of material, service or facility to another; or to supply a specific quantity, size, shape, and type of an item or service within a specific time period. An *allotment* is an official action that would specify the maximum quantity of a material, service, or facility authorized for use in a specific program or application.

Section 700.34 – Elements of an allocation order. This section sets forth certain elements that would be required in allocations orders issued by the Department of Commerce. Two elements would be required for all allocations orders: an explanation of the relationship between the allocation order and any previously or subsequently issued rated or unrated orders; and the specific start and end dates of each required allocation action. If an order is issued directly to the person to whom it applies, it must contain the written signature or name of an authorized official

or employee of the Department of Commerce and a statement identifying the person to whom it applies by name. The order must state that it is for national defense and state the obligation to comply with the order and with the DPAS. If the order provides constructive notice through publication in the *Federal Register*, the order must be signed by an authorized official or employee of the Department of Commerce and the statement may either refer to the party(ies) to which the order applies by name or specify the class of persons to whom the order applies. The order must state the requirement to comply with the order itself and with the DPAS. Original signatures are not reproduced in the *Federal Register*.

Section 700.35 – Mandatory acceptance of an allocation order. Paragraph (a) of this section would require a person to accept and comply with allocations orders. Paragraph (b) would state that a person may not discriminate against an allocation order in any manner, such as by charging higher prices or imposing terms and conditions on allocations orders that are different from what the person imposed on contracts or orders for the same resource prior to receiving the allocation order. Paragraph (c) would provide that a person who is unable to comply fully with the required actions specified in an allocation order must notify the Office of Strategic Industries and Economic Security immediately, explain the extent to which compliance is possible, and give reasons why full compliance is not possible. Such notice would not release the person from complying with the allocation order to the fullest extent possible until notified by the Department of Commerce that the order has been changed or cancelled. If the notice is given verbally, written or electronic confirmation must be provided within one working day.

Section 700.36 – Changes or cancellations of allocation orders. This section would state that the Department of Commerce may change or cancel an allocation order through an official action. Notice of such changes or cancellations may be provided directly to persons to whom the order

being cancelled or modified applies or constructive notice may be provided by publication in the *Federal Register*.

Revisions to Subpart H – Special Priorities Assistance.

Section 700.50 – General Provisions. No substantive changes would be made to this section.

The first sentence of paragraph (a) would be revised from “The DPAS is designed to be largely self-executing” to “Once a priority rating has been authorized pursuant to this part, further action by the Department of Commerce generally is not needed.” BIS believes that the proposed revised sentence is a more precise introduction to paragraph (a) because § 700.50 applies to priority ratings and not to the DPAS as a whole, which would include allocations. In addition, the priority rating process is not truly self-executing. A person must place ratings on orders and respond to rated orders within the specified time limits. However, once the rating is authorized, in most instances no further action by the Department of Commerce or a Delegate Agency is needed.

Paragraph (b) would be revised to replace the phrase “in support of this regulation” with the phrase “consistent with this part” to more precisely state the purposes of special priorities assistance. In addition the phrase “not automatically ratable under this regulation” would be replaced with “not otherwise ratable under this part” because ratings do not occur automatically and to make clear that the regulation referred to is 15 CFR Part 700. A new sentence would be added to this paragraph to inform the public that if the Department of Commerce is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, the Department of Commerce may forward the request for assistance to another resource agency, as appropriate, for action.

Section 700.51 – Requests for priority rating authority. This proposed rule would remove one factor from the non-exclusive list of factors that the Department of Commerce will consider in evaluating requests for priority rating authority. The factor proposed for removal is “the political sensitivity of the project.” BIS believes that considering such a factor when evaluating a request for priority rating authority is an extremely unlikely possibility and should be removed from the list. This proposed rule also makes two non-substantive editorial changes to § 700.51. It changes “Commerce” to “the Department of Commerce” and changes the phrase “this regulation” to “this part” to make clear that the regulation being referred to is 15 CFR part 700.

Sections 700.53 – Criteria for assistance, and 700.54 Instances where assistance will not be provided. This proposed rule would make only the non-substantive editorial revision of changing “Commerce” to read “the Department of Commerce” in these two sections.

Section 700.55 – Homeland security, emergency preparedness, and critical infrastructure protection and restoration assistance programs within the United States. The text of this proposed section is entirely new. The topic covered by § 700.55 in the existing DPAS “Assistance programs with Canada and other nations” would be dealt with in the new §§ 700.56 and 700.57.

Proposed § 700.55 would direct persons seeking priority rating authority or assistance in obtaining rated items supporting homeland security, emergency preparedness and critical infrastructure protection and restoration related activities, to direct their requests to the Federal Emergency Management Agency. This section is in accordance with Section 202(c) of Executive Order 13603, which authorizes the Secretary of Homeland Security to determine whether “all other defense programs, including civil defense and continuity of Government” are

“necessary or appropriate to promote the national defense.” A determination that a program is necessary or appropriate to promote the national defense must be made before the Department of Commerce may authorize issuance of priority ratings for contracts in support of that program.

Section 700.56 – Military assistance programs with Canada. Proposed section 700.56 addresses situations in which a person in Canada, producing items for the Canadian government, seeks priorities assistance for items produced in the United States. BIS is proposing to create a new section that speaks only to military assistance with respect to Canada because the Canadian Government has been authorized to place priority ratings in the United States to support approved defense programs. Persons in other foreign countries may place priority ratings in the United States if their requests for military assistance are sponsored by their government and have DOD approval and endorsement. The existing DPAS address military assistance programs in Canada and other foreign nations in a single section. However, BIS believes that the unique procedures that apply to requesting military assistance in Canada justify a separate section. Proposed § 700.56 also would update the contact information that applies to the government of Canada.

Section 700.57 – Military assistance programs with other nations and international organizations. Proposed § 700.57 is little changed from § 700.55 (c) and (d) of the existing DPAS. Contact information for the Department of Defense would be updated. Also, this section would expressly recognize that persons in international organizations may seek assistance in obtaining items in the United States or priority ratings for items to be purchased in the United States. BIS has provided assistance to international organizations in the past and believes that adding a reference to international organizations in proposed § 700.57 would merely codify existing agency practice and would not represent a change in policy. Proposed § 700.57(c) would add Australia and

Finland to the listing of countries that have entered into bilateral security of supply arrangements with the United States Department of Defense and revise Department of Defense contact information to make both current.

Section 700.58 – Critical infrastructure assistance programs to foreign nations and international organizations. This section directs persons in foreign nations and international organizations who are seeking assistance in obtaining items to be purchased in the United States for support of critical infrastructure protection or restoration to contact the Federal Emergency Management Agency. This section is included in accordance with Section 202(c) of Executive Order 13603, which authorizes the Secretary of Homeland Security to determine whether “all other defense programs, including civil defense and continuity of Government” are “necessary or appropriate to promote the national defense.” A determination that a program is necessary or appropriate to promote the national defense must be made before the Department of Commerce may authorize issuance of priority ratings for contracts in support of that program.

Revisions to Subpart I – Official Actions.

Section 700.60 – General provisions. Only non-substantive changes would be made to this section. References to “Commerce” would be changed to “the Department of Commerce” and references to “this regulation” would be changed to “this part” to make clear that the regulation referred to is 15 CFR part 700. This section of the proposed rule also would notify readers that directives are discussed in § 700.62.

Sections 700.61 – Rating authorizations, 700.62 Directories, and 700.63 Letters of understanding. These sections would receive only non-substantive editorial changes. The rule would correct capitalizations and replace “Commerce” with “the Department of Commerce.”

Revisions to Subpart J – Compliance.

Section 700.70 – General provisions. This proposed rule would remove paragraph (b) of the existing DPAS from this section. Paragraph (b) provides that persons who place rated orders “should” be familiar with the DPAS and must comply with its provisions. BIS believes that the former is aspirational rather than mandatory, and that the latter is redundant of specific language setting forth violations in section 700.74. This proposed rule would also make non-substantive editorial changes to section 700.70 by replacing reference to “this regulation” with references to “this part” to make clear that the regulation referred to is 15 CFR part 700.

Section 700.71 – Investigations and audits. This section would be revised in several ways. The requirement for personal service of an administrative subpoena would be revised to allow leaving a copy of the document with someone at least 18 years old at the person’s last known dwelling or place of business. Currently, section 700.70 allows leaving the document with a “person of suitable age and discretion.” BIS believes that setting a minimum age is more precise and will help to prevent misunderstandings about who is authorized to receive service. This proposed rule would remove the term “official action” from paragraphs (a), (c)(1), (c)(2) and (c)(3), because, as used in those paragraphs, compliance with an “official action” would be subsumed by a requirement to comply with the DPAS. References to “this regulation” would be replaced with references to “this part” to make clear that the regulation referred to is 15 CFR part 700.

Section 700.72 – Compulsory process. This section would be revised to make clear that if a representative of the Department of Commerce is denied access to premises or sources of information necessary to the administration or for enforcement of the DPA or the DPAS, the

Department of Commerce may seek compulsory process. The current language of § 700.72 could be read as stating that only the representative who was denied access may seek compulsory process. BIS believes that such a reading would be erroneous. However, in an effort to prevent confusion, the proposed rule would state that “the Department of Commerce may seek compulsory process” This proposed rule also would revise the word “Commerce” to read “the Department of Commerce” and would replace the reference to “this regulation or official actions” with “this part.”

Section 700.73 – Notification of failure to comply. The phrase “this regulation” would be changed to read “this part” to make clear that the regulation referred to is 15 CFR part 700.

Section 700.74 – Violations, penalties, and remedies. Only minor changes would be made to this section. The phrase “this regulation or an official action,” would be replaced with the phrase “of this part.” In five additional places the word “regulation” would be replaced with the word “part” to make clear that the regulation referred to is 15 CFR part 700. The phrase “this provision” would be replaced with “this section” to make clear that the provision referred to is § 700.74

Revisions to Subpart K – Adjustments, Exceptions, and Appeals.

Section 700.80 – Adjustments or exceptions. This proposed rule would add a requirement that the Office of Strategic Industries and Economic Security respond to requests for exceptions to or adjustments of the requirements of 15 CFR part 700, or of any official action taken by the Department of Commerce in connection with that part, within 25 days, not including Saturdays, Sundays, or government holidays. All other proposed changes to this section are non-substantive.

Section 700.81 – Appeals. Non-substantive changes would be made to this section. The address to which appeals must be sent would be updated and moved from paragraph (b) to paragraph (a). The phrase “for good cause shown” currently at the end of last sentence of paragraph (b) would be removed. That sentence addresses when, at the discretion of the Assistant Secretary for Export Administration, appeals may be accepted after the 45 day deadline. BIS believes that the phrase adds nothing of substance to the rule. In paragraph (g) the phrase “this regulation” would be replaced by “this part” to clarify that the regulation referred to is 15 CFR part 700.

Revisions to Subpart L – Miscellaneous Provisions.

Section 700.90 – Protection against claims. One non-substantive change would be made to this section. The phrase “this regulation” would be replaced with “this part” to make clear that the regulation referred to is 15 CFR part 700.

Section 700.91 – Records and reports. Only non-substantive changes would be made to this section. The phrase “this regulation” would be replaced with the phrase “this part” in four places to make clear that the regulation referred to is 15 CFR part 700. The word “Commerce” would be replaced with “the Department of Commerce.” In paragraph (e), which quotes the confidentiality provision of the DPA, the references to Section 705(e) of the DPA would be corrected to read Section 705(d), which is the section quoted.

Section 700.92 – Applicability of this part and official actions. Only non-substantive changes would be made to § 700.92. The phrase “this regulation” would be replaced with “this part” in the heading and in paragraphs (a), (b) and (c) to clarify that the regulation referred to is 15 CFR part 700. The phrase “the Department of” would be added immediately preceding the

word “Commerce” at both places where the later appears in paragraph (c). The phrase “the regulations” would be replaced with the phrase “any provision of this part” in paragraph (d).

Section 700.93 – Communications. This section would be revised to add an email address, delete the facsimile number, and clarify that the email address and telephone number listed in § 700.93 apply to requests for general information such as how to obtain copies of the DPAS, explanatory information, and requests for guidance or clarification. The section would expressly state that requests for special priorities assistance, adjustments, exceptions or appeals must be submitted in the matter specified in the sections governing those activities. The phrase “this regulation” would be replaced with the phrase “this part” to make clear that the regulation referred to is 15 CFR part 700.

Schedule I to Part 700 – Approved Programs and Delegate Agencies.

This proposed rule would revise the table in Schedule I to provide a new program symbol “G4” for a new topic heading “Critical Infrastructure Assistance to Other Nations.” To improve readability, the proposed rule would reformat the table by centering the topic headings and revising the headings for “Military Assistance to Canada,” “Military Assistance to Other Foreign Nations” and “Co-production” into full stand-alone topic headings rather than subheadings under the heading “International Defense Programs.” This rule would spell out the name of the approving agency on each line that identifies a program for which that agency has approval authority rather than use the abbreviation “Do.,” which stands for “ditto,” and would revise the term “this regulation” that appears in the footnote to read “this part” to make clear that the regulation referred to is 15 CFR part 700. Additionally, a footnote would be added to explain that program entries where the “Department of Commerce” appears in the third column require

Department of Commerce authorization even though strictly speaking, the Department of Commerce is not a delegate agency.

Request for comments.

BIS seeks comments on all aspects of this proposed rule. BIS will consider all comments received on or before [INSERT DATE SIXTY DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received after that date will be considered if feasible, but consideration cannot be assured. All comments (including any personally identifying information that those comments or transmittal e-mails contain) will be made available for public inspection and copying. Parties who wish to comment anonymously may do so by submitting their comments via Regulations.gov, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself.

Regulatory Requirements.

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This regulation contains two collections previously approved by OMB. OMB control number 0694–0053 authorizes the requirement that recipients of rated orders notify the party placing the order whether or not they will fulfill the rated order. BIS believes that this rule will not materially change the burden imposed by this collection. OMB control number 0694–0057 authorizes the collection of information that parties must send to BIS when seeking special priorities assistance or priority rating authority. BIS believes that this rule will not materially change the burden imposed by this collection. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by e-mail at jseehra@omb.eop.gov or by fax to (202) 395–7285 and to Liam McMenamin, liam.mcmenamin@bis.doc.gov.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the

Chief Counsel for Regulations, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, BIS has not prepared a regulatory flexibility analysis. The factual support for this certification is provided below.

Number of Small Entities

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, a small business, as described in the Small Business Administration's Table of Small Business Size Standards Matched to North American Industry Classification System Codes (Effective March 26, 2012), has a maximum annual revenue of \$35.5 million and a maximum of 1,500 employees (for some business categories, these numbers are lower). A small governmental jurisdiction is a government of a city, town, school district or special district with a population of less than 50,000. A small organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This rule sets criteria under which BIS (or agencies to which BIS delegates authority) will authorize prioritization of certain orders or contracts as well as criteria under which BIS would issue orders allocating resources or production facilities. This rule would affect organizations that enter into contracts to supply materials, services and facilities that are necessary for the national defense (broadly defined to include "Programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity"). BIS's experience in administering its priorities authority indicates that for-profit businesses are the organizations that

provide such materials, services and facilities. If it becomes necessary to exercise allocations authority, the same types of materials, services and facilities and the same types of providers are the ones likely to be affected. Therefore, BIS believes that two of the categories of small entities identified by the RFA, small organizations and small government jurisdictions, are unlikely to experience any economic impact as a result of this rule. However, BIS has no basis on which to estimate the number of small businesses that are likely to be affected by this rule.

Impact

BIS believes that any impact that this rule might have on small businesses would be minor. The rule has two principle components: prioritization and allocation. Prioritization is the process that is, by far, more likely to be used. Under prioritization, BIS designates certain orders, which may be placed by Government or by private entities, and assigned under one of two possible priority levels. Once so designated, such orders are referred to as “rated orders.” The recipient of a rated order must give it priority over an unrated order. The recipient of a rated order with the higher priority rating must give that order priority over any rated orders with the lower priority rating and over unrated orders. A recipient of a rated order may place one or more orders at the same priority level with suppliers and subcontractors for supplies and services necessary to fulfill the recipient’s rated order and the suppliers and subcontractors must treat the request from the rated order recipient as a rated order with the same priority level as the original rated order. The rule does not require recipients to fulfill rated orders if the price or terms of sale are not consistent with the price or terms of sale of similar non-rated orders. The rule provides a defense from liability for damages or penalties for actions or inactions made in compliance with the rule. BIS expects that this rule will not result in any increase in the use of rated orders. The changes to the provisions of 15 CFR part 700 that apply to rated orders are primarily simplifications and

clarifications. The standards under which a rated order would be issued are not changed by this rule.

Although rated orders could require a firm to fill one order prior to filling another, they would not require a reduction in the total volume of orders nor would they require the recipient to reduce prices or provide rated orders with more favorable terms than a similar non-rated order. Under these circumstances, the economic effects on the rated order recipient of substituting one order for another are likely to be offsetting, resulting in no net loss.

Allocations could be used to control the general distribution of materials or services in the civilian market. Specific allocation actions that BIS might take are set-asides, directives and allotments. A set-aside is an official action that requires a person to reserve resource capacity in anticipation of receipt of rated orders. A directive is an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions. A directive can require a person to stop or reduce production of an item, prohibit the use of selected items, or divert supply of one type of product to another, or to supply a specific quantity, size, shape, and type of an item within a specific time period. An allotment is an official action that specifies the maximum quantity of a material, service or facility authorized for use in a specific program or application.

According to available records, BIS has not taken any actions under its existing allocations authority in decades and any future allocations actions would be used only in extraordinary circumstances. As required by section 101(b) of the Defense Production Act of 1950, as amended, (50 U.S.C. app. 2071), hereinafter “DPA,” and by Section 201(e) of Executive Order 13603 of March 16, 2012, BIS may implement allocations to control the general distribution of a material in the civilian market only if the Department of Commerce made, and the President

approved, a finding (1) that the material [or service] is a scarce and critical material [or service] essential to the national defense, and (2) that the requirements of the national defense for such material [or service] cannot otherwise be met without creating a significant dislocation of the normal distribution of such material [or service] in the civilian market to such a degree as to create appreciable hardship. The term “national defense” is defined to mean “programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any related activity. Such term includes emergency preparedness activities conducted pursuant to title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*) and critical infrastructure protection and restoration.”

Even a narrower use of allocations authority under this proposed rule would be subject to the policy set forth in § 700.30 which provides that allocations will be used only when there is insufficient supply of a material, service, or facility to satisfy national defense requirements through use of priorities authority or when the use of priorities authority would cause a severe and prolonged disruption in the supply of materials, services or facilities available to support normal U.S. economic activity.

Any allocation actions taken by BIS would also have to comply with Section 701(e) of the DPA (50 U.S.C. app. 2151(e)), which provides that “small business concerns shall be accorded, to the extent practicable, a fair share of the such material [including services] in proportion to the share received by such business concerns under normal conditions, giving such special consideration as may be possible to emerging business concerns.”

Conclusion

Although BIS cannot determine precisely the number of small entities that would be affected by this rule, BIS believes that the overall impact on such entities would not be significant. With respect to priorities authority, this rule is not likely to increase the number of priority rated contracts compared to the number being issued currently. Therefore the priorities authorities' provisions of *this rule* are unlikely to have any economic impact. BIS's lack of recent experience with allocations makes gauging the impact of an allocation, should one occur, difficult. However, because (1) all allocation actions require planning that includes evaluation of the impact on the civilian market, (2) allocations to control the general distribution of a material in the civilian market may be imposed only after a determination by the President, and (3) BIS has taken no allocation actions in decades, one can expect allocations will be a rare occurrence. BIS believes that the expected unchanged level of contract prioritizations, planning and review requirements and requirements of section 701 of the DPA, which are directed at protecting the interests of small businesses provide reasonable assurance that any impact on small business will not be significant. For the reasons set forth above, the Chief Counsel for Regulations at the Department of Commerce certified that this action would not have a significant impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 700

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

For the reasons stated in the preamble, 15 CFR part 700 is proposed to be amended as follows:

PART 700 – [AMENDED]

1. The authority citations paragraph for part 700 is revised to read as follows:

Authority: 50 U.S.C. App. 2061, *et seq.*; 42 U.S.C. 5195, *et seq.*; 50 U.S.C. App 468; 10 U.S.C. 2538; 50 U.S.C. 82; E.O. 12656, 53 FR 226, 3 CFR, 1988, Comp. 585; E.O. 12742, 56 FR 1079, 3 CFR, 1991 Comp. 309; E.O. 13603, 77 FR 16651, 3 CFR, 2012 Comp., p. 225.

2. Section 700.1 is revised to read as follows:

§ 700.1 Purpose of this part.

This part implements the Defense Priorities and Allocations System (DPAS) that is administered by the Department of Commerce, Bureau of Industry and Security. The DPAS implements the priorities and allocations authority of the Defense Production Act, including use of that authority to support emergency preparedness activities pursuant to Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), and the priorities authority of the Selective Service Act and related statutes, all with respect to industrial resources. The DPAS establishes procedures for the placement, acceptance, and performance of priority rated contracts and orders and for the allocation of materials, services, and facilities. The guidance and procedures in this part are generally consistent with the guidance and procedures provided in other regulations issued under Executive Order 13603 authority.

3. Section 700.2 is revised to read as follows:

§ 700.2 Introduction.

(a) Certain national defense and energy programs (including military, emergency preparedness, homeland security, and critical infrastructure protection and restoration activities) are approved for priorities and allocations support. A complete list of currently approved programs is provided at Schedule I to this part.

(b) The Department of Commerce administers the DPAS and may exercise priorities and allocations authority to ensure the timely delivery of industrial items to meet approved program requirements.

(c) The Department of Commerce has delegated authority to place priority ratings on contracts or orders necessary or appropriate to promote the national defense to certain government agencies that issue such contracts or orders. Such delegations include authority to authorize recipients of rated orders to place ratings on contracts or orders to contractors, subcontractors, and suppliers. Schedule I to this part includes a list of agencies to which the Department of Commerce has delegated authority.

4. In § 700.3, paragraphs (a), (b), and (e) are revised to read as follows:

§ 700.3 Priority ratings and rated orders.

(a) Rated orders are identified by a priority rating and a program identification symbol. Rated orders take precedence over all unrated orders as necessary to meet required delivery dates.

Among rated orders, DX rated orders take precedence over DO rated orders. Program identification symbols indicate which approved program is attributed to the rated order.

(b) Persons receiving rated orders must give them preferential treatment as required by this part.

* * * * *

(e) Persons may place a priority rating on orders only when they are in receipt of a rated order, have been explicitly authorized to do so by the Department of Commerce or a Delegate Agency, or are otherwise permitted to do so by this part.

§ 700.4 [Removed and Reserved]

5. Section 700.4 is removed and reserved.

§ 700.5 [Removed and Reserved]

6. Section 700.5 is removed and reserved.

§ 700.6 – [Removed and Reserved]

7. Section 700.6 is removed and reserved.

§ 700.7 – [Removed and Reserved]

8. Section 700.7 is removed and reserved.

9. Section 700.8 is revised to read as follows:

§ 700.8 Definitions.

The definitions in this section apply throughout this part:

Allocation. The control of the distribution of materials, services or facilities for a purpose deemed necessary or appropriate to promote the national defense.

Allocation order. An official action to control the distribution of materials, services, or facilities for a purpose deemed necessary or appropriate to promote the national defense.

Allotment. An official action that specifies the maximum quantity of a material, service, or facility authorized for a specific use to promote the national defense.

Approved program. A program determined as necessary or appropriate for priorities and allocations support to promote the national defense by the Secretary of Defense, the Secretary of Energy, or the Secretary of Homeland Security, under the authority of the Defense Production Act and Executive Order 13603, or the Selective Service Act and Executive Order 12742.

Construction. The erection, addition, extension, or alteration of any building, structure, or project, using materials or products which are to be an integral and permanent part of the building, structure, or project. Construction does not include maintenance and repair.

Critical infrastructure. Any systems and assets, whether physical or cyber-based, so vital to the United States that the degradation or destruction of such systems and assets would have a debilitating impact on national security, including, but not limited to, national economic security and national public health or safety.

Defense Production Act. The Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*)

Delegate Agency. A government agency authorized by delegation from the Department of Commerce to place priority ratings on contracts or orders needed to support approved programs.

Directive. An official action which requires a person to take or refrain from taking certain actions in accordance with its provisions.

Emergency preparedness. All activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard. Emergency preparedness includes the following:

(1) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the nonmilitary evacuation of the civilian population);

(2) Measures to be undertaken during a hazard (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications); and

(3) Measures to be undertaken following a hazard (including activities for firefighting, rescue, emergency medical, health and sanitation services, monitoring for specific dangers of special weapons, unexploded bomb reconnaissance, essential debris clearance, emergency welfare measures, and immediately essential emergency repair or restoration of damaged vital facilities).

Hazard. An emergency or disaster resulting from:

- (1) A natural disaster, or
- (2) An accidental or man-caused event.

Homeland security. Includes efforts:

- (1) To prevent terrorist attacks within the United States;
- (2) To reduce the vulnerability of the United States to terrorism;
- (3) To minimize damage from a terrorist attack in the United States; and
- (4) To recover from a terrorist attack in the United States.

Industrial resources. All materials, services, and facilities, including construction materials, the authority for which has not been delegated to other agencies under Executive Order 13603. This term also includes the term “item” as defined and used in this part.

Item. Any raw, in process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service.

Maintenance and repair and /or operating supplies (MRO):

- (1) *Maintenance* is the upkeep necessary to continue any plant, facility, or equipment in working condition.

(2) *Repair* is the restoration of any plant, facility, or equipment to working condition when it has been rendered unsafe or unfit for service by wear and tear, damage, or failure of parts.

(3) *Operating supplies* are any items carried as operating supplies according to a person's established accounting practice. Operating supplies may include hand tools and expendable tools, jigs, dies, fixtures used on production equipment, lubricants, cleaners, chemicals and other expendable items.

(4) MRO does not include items produced or obtained for sale to other persons or for installation upon or attachment to the property of another person, or items required for the production of such items; items needed for the replacement of any plant, facility, or equipment; or items for the improvement of any plant, facility, or equipment by replacing items which are still in working condition with items of a new or different kind, quality, or design.

National defense. Programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to Title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*) and critical infrastructure protection and restoration.

Official action. An action taken by the Department of Commerce under the authority of the Defense Production Act, the Selective Service Act and related statutes, and this part. Such actions include the issuance of rating authorizations, directives, letters of understanding, demands for information, inspection authorizations, administrative subpoenas and allocation orders.

Person. Any individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof; or any authorized State or local government or agency thereof; and for purposes of administration of this part, includes the United States Government and any authorized foreign government or international organization or agency thereof, delegated authority as provided in this part.

Priorities authority. The authority of the Department of Commerce, pursuant to Section 101 of the Defense Production Act, to require priority performance of contracts and orders for industrial resource items for use in approved programs.

Priority rating. An identifying code assigned by a Delegate Agency or authorized person placed on all rated orders and consisting of the rating symbol and the program identification symbol.

Production equipment. Any item of capital equipment used in producing materials or furnishing services that has a unit acquisition cost of \$2,500 or more, an anticipated service life in excess of one year, and the potential for maintaining its integrity as a capital item.

Program identification symbols. Abbreviations used to indicate which approved program is supported by a rated order.

Rated order. A prime contract, a subcontract, or a purchase order in support of an approved program issued in accordance with the provisions of this part.

Selective Service Act. Section 18 of the Selective Service Act of 1948 (50 U.S.C. app. 468).

Set-aside. An official action that requires a person to reserve materials, services, or facilities capacity in anticipation of the receipt of rated orders.

Stafford Act. Title VI (Emergency Preparedness) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5195, *et seq.*).

Working day. Any day that the recipient of an order is open for business.

10. Section 700.10 is revised to read as follows:

§ 700.10 Authority.

(a) *Delegations to the Department of Commerce.* The priorities and allocations authorities of the President under Title I of the Defense Production Act with respect to industrial resources have been delegated to the Secretary of Commerce under Executive Order 13603 of March 16, 2012 (77 FR 16651, 3 CFR, 2012 Comp., p. 225). The priorities authorities of the President under the Selective Service Act and related statutes with respect to industrial resources have also been delegated to the Secretary of Commerce under Executive Order 12742 of January 8, 1991 (56 FR 1079, 3 CFR, 1991 Comp. 309).

(b) *Delegations by the Department of Commerce.* The Department of Commerce has authorized the Delegate Agencies to assign priority ratings to orders for industrial resources needed for use in approved programs.

(c) *Jurisdiction limitations.* (1) The priorities and allocations authority for certain items have been delegated under Executive Order 13603, other executive orders, or Interagency Memoranda of Understanding between other agencies. Unless otherwise agreed to by the concerned agencies, the provisions of this part are not applicable to those other items which include:

(i) Food resources, food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic distribution of farm equipment and commercial fertilizer (delegated to the Department of Agriculture);

(ii) All forms of energy (delegated to the Department of Energy);

(iii) Health resources (delegated to the Department of Health and Human Services);

(iv) All forms of civil transportation (delegated to the Department of Transportation); and

(v) Water resources (delegated to the Department of Defense/U.S. Army Corps of Engineers).

(2) The priorities and allocations authority set forth in this part may not be applied to communications services subject to Executive Order 13618 of July 6, 2012 – Assignment of National Security and Emergency Preparedness Communications Functions (77 FR 40779, 3 CFR, 2012 Comp., p. 273).

11. Section 700.11 is amended by revising the second sentence of paragraph (b) to read as follows:

§ 700.11 Priority ratings.

* * * * *

(b) *Program identification symbols.* * * * The list of approved programs and their identification symbols is found in Schedule I to this part. * * *

* * * * *

12. Section 700.12 is revised to read as follows:

§ 700.12 Elements of a rated order.

(a) *Elements required for all rated orders.* (1) The appropriate priority rating and program identification symbol (e.g., DO-A1, DX-A4, DO-N1).

(2) A required delivery date or dates. The words “immediately” or “as soon as possible” do not constitute a delivery date. When a “requirements contract,” “basic ordering agreement,” “prime vendor contract,” or similar procurement document bearing a priority rating contains no specific delivery date or dates, but provides for the furnishing of items from time-to-time or within a stated period against specific purchase orders, such as “calls,” “requisitions,” and “delivery orders,” the purchase orders supporting such contracts or agreements must specify a required

delivery date or dates and are to be considered as rated as of the date of their receipt by the supplier and not as of the date of the original procurement document.

(3) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of an individual authorized to sign rated orders for the person placing the order. The signature, manual or digital, certifies that the rated order is authorized under this part and that the requirements of this part are being followed.

(4) A statement that reads in substance: This is a rated order certified for national defense use and you are required to follow all the provisions of the Defense Priorities and Allocations System regulations (15 CFR part 700).

(b) Additional element required for certain emergency preparedness rated orders. If a rated order is placed for the purpose of emergency preparedness requirements and expedited action is necessary or appropriate to meet these requirements, the following statement must be included in the order. “This rated order is placed for the purpose of emergency preparedness. It must be accepted or rejected within *[Insert a time limit no less than the minimum applicable time limit specified in §700.13(d)(2)t.]*.”

13. Section 700.13 is amended by revising paragraph (d) to read as follows:

§ 700.13 Acceptance and rejection of rated orders.

* * * * *

(d) *Customer notification requirements.* (1) Except as provided in paragraph (d)(2) of this section, a person must accept or reject a rated order in writing (hard copy), or in electronic format, within fifteen (15) working days after receipt of a DO rated order and within ten (10) working days after receipt of a DX rated order. If the order is rejected, the person must give reasons in writing or electronically for the rejection.

(2) If a rated order is placed for the purpose of emergency preparedness requirements and expedited action is necessary or appropriate to meet these requirements and the order includes the statement set forth in § 700.12(b), a person must accept or reject the rated order and transmit the acceptance or rejection in writing or in an electronic format within the time specified in the rated order. The minimum times for acceptance or rejection that such orders may specify are six (6) hours after receipt of the order if the order is issued by an authorized person in response to a hazard that has occurred, or twelve (12) hours after receipt if the order is issued by an authorized person to prepare for an imminent hazard.

(3) If a person has accepted a rated order and subsequently finds that shipment or performance will be delayed, the person must notify the customer immediately, give the reasons for the delay, and advise of a new shipment or performance date. If notification is given verbally, written (hard copy) or electronic confirmation must be provided within one working day of the verbal notice.

* * * * *

14. Section 700.14 is amended by adding a sentence at the end of the examples paragraph in paragraph (b) and by revising paragraph (c)(2) to read as follows:

§ 700.14 Preferential scheduling.

* * * * *

(b) * * *

Examples: * * * However, if business operations cannot be altered to meet both the June 3 and July 15 delivery dates, then the DX rated order must be given priority over the DO rated order.

(c) * * *

(2) If a person is unable to resolve rated order delivery or performance conflicts under this section, the person should promptly seek special priorities assistance as provided in Subpart H of this part. If the person's customer objects to the rescheduling of delivery or performance of a rated order, the customer should promptly seek special priorities assistance as provided in Subpart H of this part. For any rated order against which delivery or performance will be delayed, the person must notify the customer as provided in § 700.13(d)(3).

* * * * *

15. Section 700.15 is amended by revising the second sentence of paragraph (a), the undesignated paragraph following paragraph (a), revising the second sentence of paragraph (b), and by adding paragraph (c) to read as follows:

§ 700.15 Extension of priority ratings.

(a) * * * The person must use the priority rating indicated on the customer's rated order, except as otherwise provided in this part or as directed by the Department of Commerce. * * *

Example: If a person is in receipt of a DO-A3 rated order for a navigation system and needs to purchase semiconductors for its manufacture, that person must use a DO-A3 rated order to obtain the needed semiconductors.

(b) * * * Therefore, the inclusion of the rating will continue from contractor to subcontractor to supplier throughout the entire supply chain.

(c) A person must use rated orders with suppliers to obtain items needed to fill an emergency preparedness rated order. That person must require acceptance or rejection, and transmission of that acceptance or rejection by the supplier within the time limit stated in the rated order that is being filled.

16. Section 700.16 is amended by revising paragraphs (d), (e) and (f) to read as follows:

§ 700.16 Changes or cancellations of priority ratings and rated orders.

* * * * *

(d) The following amendments do not constitute a new rated order: a change in shipping destination; a reduction in the total amount of the order; an increase in the total amount of the order which has negligible impact upon deliveries; a minor variation in size or design (prior to the start of production); or a change which is agreed upon between the supplier and the customer.

(e) A person must cancel any rated orders that the person (or a predecessor in interest) has placed with suppliers or cancel the priority ratings on those orders if the person no longer needs the items in those orders to fill a rated order.

(f) A person adding a rating to an unrated order, or changing or cancelling a priority rating must promptly notify all suppliers to whom the order was sent of the addition, change or cancellation.

17. Section 700.17 is amended by revising paragraphs (d)(1)(ii) and (f) to read as follows:

§ 700.17 Use of rated orders.

* * * * *

(d) * * *

(1) * * *

(ii) The elements of a rated order, as required by § 700.12, are included on the order with the statement required in § 700.12(a)(4) modified to read in substance: “This purchase order contains rated order quantities certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulations (15 CFR part 700) as it pertains to the rated quantities.”

* * * * *

(f) A person is not required to place a priority rating on an order for less than \$75,000, or one half of the Simplified Acquisition Threshold (as established in the Federal Acquisition Regulation (FAR) (see FAR section 2.101), whichever amount is greater, provided that delivery can be obtained in a timely fashion without the use of the priority rating.

18. Section 700.18 is revised to read as follows:

§ 700.18 Limitations on placing rated orders.

(a) *General limitations.* (1) A person may not place a rated order pursuant to this part unless the person is in receipt of a rated order, has been explicitly authorized to do so by the Department of Commerce or a Delegate Agency or is otherwise permitted to do so by this part.

(2) Rated orders may not be used to obtain:

(i) Delivery on a date earlier than needed;

(ii) A greater quantity of the item than needed, except to obtain a minimum procurable quantity;

(iii) Items in advance of the receipt of a rated order, except as specifically authorized by the Department of Commerce (see § 700.41(c) for information on obtaining authorization for a priority rating in advance of a rated order); or

(iv) Any of the following items unless specific priority rating authority has been obtained from a Delegate Agency or the Department of Commerce:

(A) Items for plant improvement, expansion or construction, unless they will be physically incorporated into a construction project covered by a rated order; or

(B) Production or construction equipment or items to be used for the manufacture of production equipment (for information on requesting priority rating authority, see § 700.41).

(v) Any items related to the development of chemical or biological warfare capabilities or the production of chemical or biological weapons, unless such development or production has been authorized by the President or the Secretary of Defense.

(3) Separate rated orders may not be placed solely for obtaining minimum procurable quantities on each order if the minimum procurable quantity would be sufficient to cover more than one rated order.

(b) *Specific item limitations.* Notwithstanding any authorization or requirement to place a rated order stated elsewhere in this part, no person may place a rated order to obtain the following items unless such order is authorized by an official action of the Department of Commerce.

(1) Copper raw materials.

(2) Crushed stone.

(3) Gravel.

(4) Sand.

(5) Scrap.

(6) Slag.

(7) Steam heat, central.

(8) Waste paper.

19. Section 700.21 is revised to read as follows:

§ 700.21 Application for priority rating authority.

(a) For projects believed to maximize domestic energy supplies, a person may request priority rating authority for scarce, critical, and essential supplies of materials, equipment, and services (related to the production of materials or equipment, or the installation, repair, or maintenance of equipment) by submitting a request to the Department of Energy. Further information may be obtained from the Department of Energy, Office of Electricity Delivery and Energy Reliability, 1000 Independence Avenue, SW, Washington, DC 20585.

(b) If the Department of Energy notifies the Department of Commerce that the project maximizes domestic energy supplies and that the materials, equipment, or services are critical and essential, the Department of Commerce will determine whether the items in question are scarce, and, if they are scarce, whether there is a need to use the priorities authority.

(1) Scarcity implies an unusual difficulty in obtaining the materials, equipment, or services in a time frame consistent with the timely completion of the energy project. In determining scarcity, the Department of Commerce may consider factors such as the following:

(i) Value and volume of material or equipment shipments;

- (ii) Consumption of material and equipment;
- (iii) Volume and market trends of imports and exports;
- (iv) Domestic and foreign sources of supply;
- (v) Normal levels of inventories;
- (vi) Rates of capacity utilization;
- (vii) Volume of new orders; and
- (viii) Lead times for new orders.

(2) In finding whether there is a need to use the priorities authority, the Department of Commerce may consider alternative supply solutions and other measures.

(c) After the Department of Commerce has conducted its analysis, it will advise the Department of Energy whether the two findings have been satisfied. If the findings are satisfied, the Department of Commerce will authorize the Department of Energy to grant the use of a priority rating to the applicant.

(d) Schedule I to this part includes a list of approved programs to support the maximization of domestic energy supplies. A Department of Energy regulation setting forth the procedures and criteria used by the Department of Energy in making its determination and findings is published in 10 CFR part 216.

Subpart F – Allocation Actions

20. The heading of Subpart F is revised to read as set forth above.

21. Section 700.30 is revised to read as follows:

§ 700.30 Policy.

(a) Allocation orders will:

(1) Be used only when there is insufficient supply of a material, service, or facility to satisfy national defense requirements through the use of the priorities authority or when the use of the priorities authority would cause a severe and prolonged disruption in the supply of materials, services, or facilities available to support normal U.S. economic activities; and

(2) Not be used to ration materials or services at the retail level.

(b) Allocation orders, when used, will be distributed equitably among the suppliers of the materials, services, or facilities being allocated and not require any person to relinquish a disproportionate share of the civilian market.

22. Section 700.31 is revised to read as follows:

§ 700.31 General procedures.

Before the Department of Commerce uses its allocations authority to address a supply problem within its resource jurisdiction, it will develop a plan that includes:

(a) A copy of the written determination made in accordance with section 202 of Executive Order 13603, that the program or programs that would be supported by the allocation action are necessary or appropriate to promote the national defense;

- (b) A detailed description of the situation to include any unusual events or circumstances that have created the requirement for an allocation action;
- (c) A statement of the specific objective(s) of the allocation action;
- (d) A list of the materials, services, or facilities to be allocated;
- (e) A list or description of the sources of the materials, services, or facilities that will be subject to the allocation action;
- (f) A detailed description of the provisions that will be included in the allocations orders, including the type(s) of allocations orders, the percentages or quantity of capacity or output to be allocated for each purpose, the relationship with previously or subsequently received priority rated and unrated contracts and orders, and the duration of the allocation action (*e.g.*, anticipated start and end dates);
- (g) An evaluation of the impact of the proposed allocation action on the civilian market; and
- (h) Proposed actions, if any, to mitigate disruptions to civilian market operations.

23. In Subpart F, add § 700.32 to read as follows:

§ 700.32 Controlling the general distribution of a material in the civilian market.

No allocation action by the Department of Commerce may be used to control the general distribution of a material in the civilian market unless the conditions of paragraphs (a), (b) and (c) of this section are met.

(a) The Secretary has made a written finding that:

(1) Such material is a scarce and critical material essential to the national defense, and

(2) The requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship.

(b) The Secretary has submitted the finding for the President's approval through the Assistant to the President and National Security Advisor and the Assistant to the President for Homeland Security and Counterterrorism.

(c) The President has approved the finding.

(d) In this section, the term, "Secretary" means the Secretary of Commerce or his or her designee.

24. In Subpart F, add § 700.33 to read as follows:

§ 700.33 Types of allocations orders.

There are three types of allocations orders available for communicating allocation actions.

(a) *Set-aside*. A set-aside is an official action that requires a person to reserve materials, services, or facilities capacity in anticipation of the receipt of rated orders.

(b) *Directive*. A directive is an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions. For example, a directive can require a

person to: stop or reduce production of an item; prohibit the use of selected materials, services, or facilities; or divert the use of materials, services, or facilities from one purpose to another.

(c) *Allotment*. An allotment is an official action that specifies the maximum quantity of a material, service, or facility authorized for a specific use to promote the national defense.

25. In Subpart F, add § 700.34 to read as follows:

§ 700.34 Elements of an allocation order.

Allocation orders may be issued directly to the affected persons or by constructive notice to the parties through publication in the *Federal Register*. This section describes the elements that each order must include.

(a) Elements to be included in all allocation orders.

(1) A detailed description of the required allocation action(s), including its relationship to previously or subsequently received DX rated orders, DO rated orders and unrated orders.

(2) Specific start and end calendar dates for each required allocation action.

(b) Elements to be included in orders issued directly to affected persons.

(1) A statement that reads in substance: “This is an allocation order certified for national defense use. [Insert the name of the person receiving the order] is required to comply with this order, in accordance with the provisions of the Defense Priorities and Allocations System regulations (15 CFR part 700).”

(2) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of an authorized official or employee of the Department of Commerce.

(c) Elements to be included in an allocation order that gives constructive notice through publication in the *Federal Register*.

(1) A statement that reads in substance: “This is an allocation order certified for national defense use. [Insert the name(s) of the person(s) to whom the order applies or a description of the class of persons to whom the order applies] is (are) required to comply with this order, in accordance with the provisions of the Defense Priorities and Allocations System regulations (15 CFR part 700).”

(2) The order must be signed by an authorized official or employee of the Department of Commerce.

26. In Subpart F, add § 700.35 to read as follows:

§ 700.35 Mandatory acceptance of an allocation order.

(a) Except as otherwise specified in this section, a person shall accept and comply with every allocation order received.

(b) A person shall not discriminate against an allocation order in any manner such as by charging higher prices for materials, services, or facilities covered by the order or by imposing terms and conditions for contracts and orders involving allocated materials, services, or facilities that differ

from the person's terms and conditions for contracts and orders for the materials, services, or facilities prior to receiving the allocation order.

(c) If a person is unable to comply fully with the required action(s) specified in an allocation order, the person must notify the Office of Strategic Industries and Economic Security immediately, explain the extent to which compliance is possible, and give the reasons why full compliance is not possible. If notification is given verbally, written or electronic confirmation must be provided within one working day. Such notification does not release the person from complying with the order to the fullest extent possible, until the person is notified by the Department of Commerce that the order has been changed or cancelled.

27. In Subpart F, add § 700.36 to read as follows:

§ 700.36 Changes or cancellations of allocation orders.

An allocation order may be changed or cancelled by an official action from the Department of Commerce. Notice of such changes or cancellations may be provided directly to persons to whom the order being cancelled or modified applies or constructive notice may be provided by publication in the *Federal Register*.

28. Section 700.50 is amended by revising the first sentence of paragraph (a) and revising paragraph (b) to read as follows:

§ 700.50 General provisions.

(a) Once a priority rating has been authorized pursuant to this part, further action by the Department of Commerce generally is not needed. * * *

(b) Special priorities assistance can be provided for any reason consistent with this part, such as assisting in obtaining timely deliveries of items needed to satisfy rated orders or authorizing the use of priority ratings on orders to obtain items not otherwise ratable under this part. If the Department of Commerce is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, the Department of Commerce may forward the request to another agency, identified in § 700.10(c), as appropriate, for action.

* * * * *

§700.51 – [Amended]

29. Section 700.51 is amended by:

- a. Removing the word “regulation” and adding in its place the word “part” in paragraph (a), introductory text;
- b. Adding the phrase “the Department of” immediately preceding the word “Commerce” in the first sentence of paragraph (c)(1);
- c. Adding the word “and” at the end of paragraph (c)(3)(iv);
- d. Removing paragraph (c)(3)(v); and
- e. Redesignating paragraph (c)(3)(vi) as (c)(3)(v).

§ 700.53 – [Amended]

30. Section 700.53 is amended by adding the words “the Department of” between the word “or” and the word “Commerce” in the introductory text.

§ 700.54 – [Amended]

31. Section 700.54 is amended by adding the words “the Department of” between the word “or” and the word “Commerce” in the introductory text.

32. Section 700.55 is revised to read as follows:

§ 700.55 Homeland security, emergency preparedness, and critical infrastructure protection and restoration assistance programs within the United States.

Any person requesting priority rating authority or requiring assistance in obtaining rated items supporting homeland security, emergency preparedness, and critical infrastructure protection and restoration related activities should submit a request for such assistance or priority rating authority to the Office of Policy and Program Analysis, Federal Emergency Management Agency, Department of Homeland Security, 500 C Street, SW, Washington, DC, 20472; telephone: (202) 646-3520; Fax: (202) 646-4060; Email: fema-dpas@dhs.gov, Web site: <http://www.fema.gov/defense-production-act-program-division>.

33. In Subpart H, § 700.56 is added to read as follows:

§ 700.56 Military assistance programs with Canada.

(a) To promote military assistance to Canada, this section provides for authorizing priority ratings to persons in Canada to obtain items in the United States in support of approved programs. Although priority ratings have no legal authority outside of the United States, this section also provides information on how persons in the United States may obtain informal assistance in Canada in support of approved programs.

(b) The joint United States-Canadian military arrangements for the defense of North America and the integrated nature of the United States and Canadian defense industries require close coordination and the establishment of a means to provide mutual assistance to the defense industries located in both countries.

(c) The Department of Commerce coordinates with the Canadian Public Works and Government Services Canada on all matters of mutual concern relating to the administration of this part.

(d) Any person in the United States ordering defense items in Canada in support of an approved program should inform the Canadian supplier that the items being ordered are to be used to fill a rated order. The Canadian supplier should be informed that if production materials are needed from the United States by the supplier or the supplier's vendor to fill the order, the supplier or vendor should contact the Canadian Public Works and Government Services Canada for authority to place rated orders in the United States: Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, Phase 3, Place du Portage, Level 0A1, 11 Laurier Street, Gatineau, Quebec, K1A 0S5, Canada; Telephone: (819) 956-6825; Fax: (819) 956-7827, or electronically at

DGAPrioritiesdedefense.ACQBDefencePriorities@tpsgc-pwgscc.gc.ca

(e) Any person in Canada producing defense items for the Canadian government may also obtain priority rating authority for items to be purchased in the United States by applying to the

Canadian Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, in accordance with its procedures.

(f) Persons in Canada needing special priorities assistance in obtaining defense items in the United States may apply to the Canadian Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, for such assistance. Public Works and Government Services Canada will forward appropriate requests to the Department of Commerce.

(g) Any person in the United States requiring assistance in obtaining items in Canada must submit a request through the Delegate Agency to the Office of Strategic Industries and Economic Security, U.S. Department of Commerce on Form BIS-999. The Department of Commerce will forward appropriate requests to the Canadian Public Works and Government Services Canada.

34. In Subpart H, § 700.57 is added to read as follows:

§ 700.57 Military assistance programs with other nations and international organizations.

(a) *Scope.* To promote military assistance to foreign nations and international organizations (for example the North Atlantic Treaty Organization or the United Nations), this section provides for authorizing priority ratings to persons in foreign nations or international organizations to obtain items in the United States in support of approved programs. Although priority ratings have no legal authority outside of the United States, this section also provides information on how persons in the United States may obtain informal assistance in Australia, Finland, Italy, The Netherlands, Sweden, and the United Kingdom in support of approved programs.

(b) *Foreign nations and international organizations.* (1) Any person in a foreign nation other than Canada, or any person in an international organization, requiring assistance in obtaining

items in the United States or priority rating authority for items to be purchased in the United States, should submit a request for such assistance or priority rating authority to: the Department of Defense DPAS Lead in the Office of the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy, 3330 Defense Pentagon, Washington, DC 20301; Telephone: (703) 697-0051; Fax: (703) 695-4885; Email: MIBP@osd.mil, web site: <http://www.acq.osd.mil/mibp>.

(i) If the end product is being acquired by a U.S. Government agency, the request should be submitted to the Department of Defense DPAS Lead through the U.S. contract administration representative.

(ii) If the end product is being acquired by a foreign nation or international organization, the request must be sponsored prior to its submission to the Department of Defense DPAS Lead by the government of the foreign nation or the international organization that will use the end product.

(2) If the Department of Defense endorses the request, it will be forwarded to the Department of Commerce for appropriate action.

(c) Requesting assistance in Australia, Finland, Italy, The Netherlands, Sweden, and the United Kingdom.

(1) The Department of Defense has entered into bilateral security of supply arrangements with Australia, Finland, Italy, The Netherlands, Sweden, and the United Kingdom that allow the Department of Defense to request the priority delivery for Department of Defense contracts, subcontracts, and orders from companies in these countries.

(2) Any person in the United States requiring assistance in obtaining the priority delivery of a contract, subcontract, or order in Australia, Finland, Italy, The Netherlands, Sweden, or the United Kingdom to support an approved program should contact the Department of Defense

DPAS Lead in the Office of the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy for assistance. Persons in Australia, Finland, Italy, The Netherlands, Sweden, and the United Kingdom should request assistance in accordance with paragraph (b)(1) of this section.

35. In Subpart H, § 700.58 is added to read as follows:

§ 700.58 Critical infrastructure assistance programs to foreign nations and international organizations.

(a) *Scope.* To promote critical infrastructure assistance to foreign nations, this section provides for authorizing priority ratings to persons in foreign nations or international organizations (for example the North Atlantic Treaty Organization or the United Nations) to obtain items in the United States in support of approved programs.

(b) *Foreign nations or international organizations.* Any person in a foreign nation or representing an international organization requiring assistance in obtaining items to be purchased in the United States for support of critical infrastructure protection and restoration should submit a request for such assistance or priority rating authority to the Office of Policy and Program Analysis, Federal Emergency Management Agency, Department of Homeland Security, 500 C Street, SW, Washington, DC 20472; telephone: (202) 646-3520; Fax: (202) 646-4060; Email: fema-dpas@dhs.gov, Web site: <http://www.fema.gov/defense-production-act-program-division>.

36. Section 700.60 is revised to read as follows:

§ 700.60 General provisions.

(a) The Department of Commerce may, from time-to-time, take specific official actions to implement or enforce the provisions of this part.

(b) Some of these official actions (rating authorizations and letters of understanding) are discussed in this subpart. Official actions that pertain to compliance (administrative subpoenas, demands for information, and inspection authorizations) are discussed in § 700.71(c). Directives are discussed in § 700.62.

37. Section 700.61 is amended by revising the heading and paragraph (a) introductory text to read as follows:

§ 700.61 Rating authorizations.

(a) A rating authorization is an official action granting specific priority rating authority that:

* * * * *

§ 700.62 – [Amended]

38. Section 700.62 is amended by removing “Directive” wherever it appears and by adding in its place “directive”.

§ 700.63 – [Amended]

39. Section 700.63 is amended by:

a. Removing “Letter of Understanding” wherever it appears and adding in its place “letter of understanding”; and

- b. Adding the words “the Department of” immediately preceding the word “Commerce”.

§ 700.70 – [Amended]

40. Section 700.70 is amended by:

- a. Removing paragraph (b);
- b. Redesignating paragraph (c) as paragraph (b); and
- c. Removing the word “regulation” wherever it appears and adding in its place the word “part”.

41. Section 700.71 is revised to read as follows:

§700.71 Audits and investigations.

(a) Audits and investigations are official actions involving the examination of books, records, documents, other writings and information to ensure that the provisions of the Defense Production Act, the Selective Service Act and related statutes, and this part have been properly followed. An audit or investigation may also include interviews and a systems evaluation to detect problems or failures in the implementation of this part.

(b) When undertaking an audit, investigation, or other inquiry, the Department of Commerce shall:

(1) Define the scope and purpose in the official action given to the person under investigation,
and

(2) Have ascertained that the information sought or other adequate and authoritative data are not available from any Federal or other responsible agency.

(c) In administering this part, the Department of Commerce may issue the following documents, which constitute official actions:

(1) *Administrative subpoenas.* An administrative subpoena requires a person to appear as a witness before an official designated by the Department of Commerce to testify under oath on matters of which that person has knowledge relating to the enforcement or the administration of the Defense Production Act, the Selective Service Act and related statutes, or this part. An administrative subpoena may also require the production of books, papers, records, documents and physical objects or property.

(2) *Demand for information.* A demand for information requires a person to furnish to a duly authorized representative of the Department of Commerce any information necessary or appropriate to the enforcement or the administration of the Defense Production Act, the Selective Service Act, or this part.

(3) *Inspection authorizations.* An inspection authorization requires a person to permit a duly authorized representative of the Department of Commerce to interview the person's employees or agents, to inspect books, records, documents, other writings and information in the person's possession or control at the place where that person usually keeps them, and to inspect a person's

property when such interviews and inspections are necessary or appropriate to the enforcement or the administration of the Defense Production Act, the Selective Service Act, or this part.

(d) The production of books, records, documents, other writings and information will not be required at any place other than where they are usually kept if, prior to the return date specified in the administrative subpoena or demand for information, a duly authorized official of the Department of Commerce is furnished with copies of such material that are certified under oath to be true copies. As an alternative, a person may enter into a stipulation with a duly authorized official of the Department of Commerce as to the content of the material.

(e) An administrative subpoena, demand for information, or inspection authorization shall include the name, title or official position of the person to be served, the evidence sought to be adduced, and its general relevance to the scope and purpose of the audit, investigation, or other inquiry. If employees or agents are to be interviewed; if books, records, documents, other writings, or information are to be produced; or if property is to be inspected; the administrative subpoena, demand for information, or inspection authorization will describe them with particularity.

(f) Service of documents shall be made in the following manner:

(1) Service of a demand for information or inspection authorization shall be made personally, or by certified mail—return receipt requested at the person's last known address. Service of an administrative subpoena shall be made personally. Personal service may also be made by leaving a copy of the document with someone at least 18 years of age at the person's last known dwelling or place of business.

(2) Service upon other than an individual may be made by serving a partner, corporate officer, or a managing or general agent authorized by appointment or by law to accept service of process. If an agent is served, a copy of the document shall be mailed to the person named in the document.

(3) Any individual 18 years of age or older may serve an administrative subpoena, demand for information, or inspection authorization. When personal service is made, the individual making the service shall prepare an affidavit as to the manner in which service was made and the identity of the person served, and return the affidavit, and in the case of subpoenas, the original document, to the issuing officer. In case of failure to make service, the reasons for the failure shall be stated on the original document.

42. Section 700.72 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 700.72 Compulsory process.

(a) If a person refuses to permit a duly authorized representative of the Department of Commerce to have access to any premises or source of information necessary to the administration or enforcement of the Defense Production Act or this part, the Department of Commerce may seek compulsory process. * * *

* * * * *

43. Section 700.73 is revised to read as follows:

§ 700.73 Notification of failure to comply.

(a) At the conclusion of an audit, investigation, or other inquiry, or at any other time, the Department of Commerce may inform the person in writing where compliance with the requirements of the Defense Production Act, the Selective Service Act and related statutes, or this part were not met.

(b) In cases where the Department of Commerce determines that failure to comply with the provisions of the Defense Production Act, the Selective Service Act and related statutes, or this part was inadvertent, the person may be informed in writing of the particulars involved and the corrective action to be taken. Failure to take corrective action may then be construed as a willful violation of the Defense Production Act, this part, or an official action.

44. Section 700.74 is amended by revising paragraphs (a), (b), (c)(1), (c)(2) and (c)(3) to read as follows:

§700.74 Violations, penalties, and remedies.

(a) Willful violation of the provisions of Title I or Sections 705 or 707 of the Defense Production Act, the priorities provisions of the Selective Service Act and related statutes or this part is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. The maximum penalty provided by the Defense Production Act is a \$10,000 fine, or one year in prison, or both. The maximum penalty provided by the Selective Service Act is a \$50,000 fine, or three years in prison, or both.

(b) The government may also seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act, this part, or an official action.

(c) * * *

(1) No person may solicit, influence or permit another person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, this part, or an official action.

(2) No person may conspire or act in concert with any other person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, this part, or an official action.

(3) No person shall deliver any item if the person knows or has reason to believe that the item will be accepted, redelivered, held, or used in violation of the Defense Production Act, this part, or an official action. In such instances, the person must immediately notify the Department of Commerce that, in accordance with this section, delivery has not been made.

45. Section 700.80 is amended by revising paragraphs (a)(1) and (2), (b), and (c), and by revising the parenthetical sentence at the end of paragraph (d) to read as follows:

§700.80 Adjustments or exceptions.

(a) * * *

(1) A provision of this part or an official action results in an undue or exceptional hardship on that person not suffered generally by others in similar situations and circumstances; or

(2) The consequence of following a provision of this part or an official action is contrary to the intent of the Defense Production Act, the Selective Service Act and related statutes, or this part.

(b) Each request for adjustment or exception must be in writing and contain a complete statement of all the facts and circumstances related to the provision of this part or official action from which adjustment is sought and a full and precise statement of the reasons why relief should be provided.

(c) The submission of a request for adjustment or exception shall not relieve any person from the obligation of complying with the provision of this part or official action in question while the request is being considered unless such interim relief is granted in writing by the Office of Strategic Industries and Economic Security. The Office of Strategic Industries and Economic Security shall respond to requests for adjustment of or exceptions to compliance with the provisions of this part or an official action within 25 (twenty-five) days, not including Saturdays, Sundays or Government holidays, of the date of receipt.

(d) * * * (For information on the appeal procedure, see § 700.81.)

46. Section 700.81 is amended by revising paragraphs (a), (b), and (g), to read as follows:

§ 700.81 Appeals.

(a) Any person who has had a request for adjustment or exception denied by the Office of Strategic Industries and Economic Security under § 700.80, may appeal to the Assistant Secretary for Export Administration, Department of Commerce, who shall review and reconsider the denial. Such appeals should be submitted to the Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Room 3886, Washington, DC 20230, Ref: DPAS Appeals.

(b) Appeals of denied requests for exceptions from or adjustments to compliance with the provisions of this part or an official action must be received by the Assistant Secretary for Export Administration no later than 45 days after receipt of a written notice of denial from the Office of Strategic Industries and Economic Security. After this 45-day period, an appeal may be accepted at the discretion of the Assistant Secretary for Export Administration.

* * * * *

(g) The submission of an appeal under this section shall not relieve any person from the obligation of complying with the provision of this part or official action in question while the appeal is being considered, unless such relief is granted in writing by the Assistant Secretary for Export Administration.

* * * * *

§ 700.90 – [Amended]

47. Section 700.90 is amended by removing the word “regulation” and adding in its place the word “part”.

§ 700.91 – [Amended]

48. Section 700.91 is amended by:

- a. Removing the word “regulation” wherever it appears and adding in its place the word “part”;
- b. Adding the phrase “the Department of” immediately preceding the word “Commerce” wherever it appears; and

- c. Removing “705(e)” and adding in its place “705(d)” wherever it appears.

§ 700.92 – [Amended]

49. Section 700.92 is amended by:

- a. Removing the word “regulation” wherever it appears in the heading and in paragraphs (a), (b) and (c) and adding in its place the word “part”;
- b. Adding the phrase “the Department of” immediately preceding the word “Commerce” wherever it appears; and
- c. Removing the phrase “the regulations” and adding in its place “any provision of this part” in the first sentence of paragraph (d).

§ 700.93 – [Amended]

50. Section 700.93 is revised to read as follows:

§ 700.93 Communications.

General communications concerning this part, including how to obtain copies of this part and explanatory information, requests for guidance or clarification, may be addressed to the Office of Strategic Industries and Economic Security, Room 3876, Department of Commerce, Washington, DC 20230, Ref: DPAS; telephone (202) 482-3634, e-mail DPAS@bis.doc.gov.

Request for priorities assistance under § 700.50, adjustments or exceptions under § 700.80 of this part or appeals under § 700.81, must be submitted in the manner specified in those sections.

51. Schedule I to part 700 is revised to read as follows:

Schedule I to Part 700—Approved Programs and Delegate Agencies

The programs listed in this schedule have been approved for priorities support under this part by the Department of Defense¹, the Department of Energy or the Department of Homeland Security, in accordance with section 202 of Executive Order 13603. They have equal preferential status. The Department of Commerce has authorized the delegate agencies listed in the third column to use this part in support of those programs assigned to them, as indicated below.²

Program identification symbol	Approved program	Agency(ies)
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¹ Department of Defense includes: The Office of the Secretary of Defense, the Military Departments, the Joint Staff, the Combatant Commands, the Defense Agencies, the Defense Field Activities, all other organizational entities in the Department of Defense, and, for purposes of this part, the Central Intelligence Agency and the National Aeronautics and Space Administration as associated agencies.

² The Department of Commerce is also listed as an agency in the third column for programs where its authorization is necessary to place rated orders.

Program identification symbol	Approved program	Agency(ies)
Defense Programs		
A1	Aircraft	Department of Defense
A2	Missiles	Department of Defense
A3	Ships	Department of Defense
A4	Tank—Automotive	Department of Defense
A5	Weapons	Department of Defense
A6	Ammunition	Department of Defense
A7	Electronic and communications equipment	Department of Defense
B1	Military building supplies	Department of Defense
B8	Production equipment (for defense contractor's	Department of Defense

Program identification symbol	Approved program	Agency(ies)
	account)	
B9	Production equipment (Government owned)	Department of Defense
C1	Food resources (combat rations)	Department of Defense
C2	Department of Defense construction	Department of Defense
C3	Maintenance, repair, and operating supplies (MRO) for Department of Defense facilities	Department of Defense
C9	Miscellaneous	Department of Defense
Military Assistance to Canada		
D1	Canadian military programs	Department of Commerce
D2	Canadian production and construction	Department of Commerce
D3	Canadian atomic energy program	Department of Commerce

Program identification symbol	Approved program	Agency(ies)
Military Assistance to Other Foreign Nations		
G1	Certain munitions items purchased by foreign governments through domestic commercial channels for export	Department of Commerce
G2	Certain direct defense needs of foreign governments other than Canada	Department of Commerce
G3	Foreign nations (other than Canada) production and construction	Department of Commerce
Critical Infrastructure Assistance to Foreign Nations		
G4	Foreign critical infrastructure programs	Department of Commerce
Co-Production		
J1	F-16 Co-Production Program	Departments of Commerce

Program identification symbol	Approved program	Agency(ies)
		and Defense
Atomic Energy Programs		
E1	Construction	Department of Energy
E2	Operations—including maintenance, repair, and operating supplies (MRO)	Department of Energy
E3	Privately owned facilities	Department of Energy
Domestic Energy Programs		
F1	Exploration, production, refining, and transportation	Department of Energy
F2	Conservation	Department of Energy
F3	Construction, repair, and maintenance	Department of Energy

Program identification symbol	Approved program	Agency(ies)
Other Defense, Energy, and Related Programs		
H1	Certain combined orders (see section 700.17(c))	Department of Commerce
H5	Private domestic production	Department of Commerce
H6	Private domestic construction	Department of Commerce
H7	Maintenance, repair, and operating supplies (MRO)	Department of Commerce
H8	Designated Programs	Department of Commerce
K1	Federal supply items	General Services Administration
Homeland Security Programs		

Program identification symbol	Approved program	Agency(ies)
N1	Federal emergency preparedness, mitigation, response, and recovery	Department of Homeland Security
N2	State, local, tribal government emergency preparedness, mitigation, response, and recovery	Department of Homeland Security
N3	Intelligence and warning systems	Department of Homeland Security
N4	Border and transportation security	Department of Homeland Security
N5	Domestic counter-terrorism, including law enforcement	Department of Homeland Security
N6	Chemical, biological, radiological, and nuclear countermeasures	Department of Homeland Security

Program identification symbol	Approved program	Agency(ies)
N7	Critical infrastructure protection and restoration	Department of Homeland Security
N8	Miscellaneous	Department of Homeland Security

Dated: January 21, 2014.

Kevin J. Wolf

Assistant Secretary for Export Administration

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